IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No. 7092 of 2001
With
SPECIAL CIVIL APPLICATION No. 6865 of 2006
With
CIVIL APPLICATION No. 11743 of 2006
In SPECIAL CIVIL APPLICATION No. 6865 of 2006
With
CIVIL APPLICATION No. 12486 of 2006
In SPECIAL CIVIL APPLICATION No. 6865 of 2006

For Approval and Signature:

HONOURABLE MR.JUSTICE JAYANT PATEL

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

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BABULAL BADRIPRASAD VARMA - Petitioner(s)
Versus
SURAT MUNICIPAL CORPORATION & 3 - Respondent(s)

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Appearance :
MR BA SURTI for Petitioner(s) : 1,
MR PRASHANT G DESAI for Respondent(s) : 1,
MR Dipen Desai, AGP for Respondent(s) : 2,
MR ASPI M KAPADIA for Respondent(s) : 3,
RULE SERVED for Respondent(s) : 4,

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CORAM : HONOURABLE MR.JUSTICE JAYANT PATEL

Date : 23/11/2006

ORAL JUDGMENT

1. As in the matters, the issues are interconnected, they are being considered by this common order.

2. Special Civil Application No.7092 of 2001 is preferred by one Babulal Bhadriprasad Varma claiming as the tenant of the area of Final Plot No.17/8 of Town Planning Scheme No.5, Umra (North), Surat (hereinafter referred to as `T.P.Scheme'). It has been prayed by the said petitioner that the action of acquiring and demolishing the structure over the land in question of Original Plot No.17/8, be quashed. It appears and not in dispute that the Corporation called upon the owner of the property as well as the tenant to entrust the possession of the Final Plot by removal of the construction/encroachment over the plot in question bearing original plot no.17/8.

3. Special Civil Application No.6865 of 2006 is preferred by Jayvadan Keshavkant Gramini and other six persons claiming as the owners of original plot no.17/8 and 17/7 and it is prayed in the petition that the respondent no.2 - Corporation be directed to hand over the vacant and peaceful possession of Final Plot No.157 of T.P.Scheme which has been allotted to them.

4. Civil Application No.11743 of 2006 is preferred by one Jayantibhai Balubhai Ahir and Vallabhbhai Balubhai Ahir claiming that the original

owner of original plot had entered into the transaction of sale with them and the possession was also handed over by way of part performance of the sale agreement. In furtherance to the application it has been submitted that the land of original plot no.17/7 which is now given Final Plot No.157 in the scheme is in possession of them since 22.6.68 and the possession receipt is also executed by Keshavkant M Gramini who was holding the land and the petitioners of Special Civil Application No.6865 of 2006 are representing the interest in the land being successors of Keshavkant Gramini. It is also submitted that not only the agreement to sale was executed by Keshavkant Gramini but the other legal heirs including one Priyavadan Keshavkant Gramini who has sworn the petition has also confirmed the said position of having entered into the agreement with deceased Keshavkant Gramini and while confirming the said position, the additional consideration is also received by the petitioners including the one who has sworn the petition. As per the applicant, such aspects were relevant for the purpose of this petition and are suppressed by the petitioners in the petition. Similar is the another application preferred by Hasmukhbhai Ravjibhai AAhir through P.O.A. Ishwarbhai Karsanbhai AAhir contenting inter alia that there is sale agreement and the possession of the land admeasuring 509.90 sq.yards bearing part of Plot no.15 of Final Plot No.157 is entrusted under the agreement to sale by deceased Keshavkant Gramini and the said possession is confirmed as per the writing executed on 15.6.2006.

5. Heard Mr.Surti appearing for the petitioners in both the petitions, Mr.P.G.Desai for the Corporation, Mr.Kapadia for Kanbi Sivay Lok Seva Mandal, Umra respondent no.3 of Special Civil Application No.7092 of 2001, Mr.Tushar Mehta for the applicant of CA No.11743 of 2006 and Mr.Devang T Shah for applicant in CA No.12486 of 2006 and Mr.Dipen Desai for the Government.

6. It appears from the record produced by the Corporation with the affidavit-in-reply filed in Special Civil Application No.6865 of 2006 that deceased Keshavkant Modibhai Gramini was holding new impartiable tenure land bearing part of revenue survey no.17 which comprises into two origial plots No.17/7 admeasuring 1391 sq.mtr. and No.17/8 admeasuring 753 sq.mtr. Therefore, the total holding of Keshavkant Modibhai is shown as 2179 sq.mtr. As against both the original plots of 17/7 and 17/8, the allotment in the scheme is Final Plot No.157 admeasuring 1067. The map produced by the Corporation is not in dispute, copy whereof is produced at page 36 Annexure II . The perusal of the said map shows that final plot no.157 which is allotted to Keshavkant Gramini is carved out from the land of original plot no.17/7 by reduction of certain area to say, in other words, the original plot was admeasuring 1391 sq.mtr. and the Final Plot is carved out of 157 of the land admeasuring 1067 sq.mtr. and the second portion is also given final plot no.158 which is not the subject matter of this petition. It also appears from the map that the land of original plot no.17/8 which was admeasuring 753 sq.mtr. is

utilized for road purpose to a great extent and the angular shape portion adjacent to the road is merged with the final plot no.165 which has been allotted to the trust represented by Mr.Kapadia. It appears that on factual aspects for the area of the original plot and allotment of final plot to the respective parties in the scheme, there is no dispute except the inter se dispute between the occupant / holder of the plot of the petitioners and the above referred applicants who are claiming right under the agreement to sale by way of part performance.

7. The principal contention as raised on behalf of the petitioner by Mr.Surti is that the Corporation cannot take possession of the land bearing original plot no.17/8 from the petitioners or the tenant of the petitioners until the possession is simultaneously handed over by the Corporation to the petitioners of final plot no.157 and he, therefore, submitted that the action on the part of the Corporation which is implementing the scheme of dispossessing or evicting the occupant of original plot no.17/8 is arbitrary and, therefore, this Court may issue suitable directions for such purpose.

8. The contention prima facie appears to be attractive but on detailed scrutiny it appears that the final plot no.157 which is to be allotted and whose possession was to be entrusted as per the scheme is not the different land than the land which was held by the original holder. The land of Final plot no.157 as observed earlier is carved out from the original plot no.17/7 which was held by the same

person namely deceased Keshavkant Gramini. If the person holding the original plot is allotted final plot from the same land, there is no question of entrustment of the possession by the Corporation to such person nor such person can validly make the grievance that there should be a separate entrustment of the possession of final plot before depriving him from the other land which has gone in the scheme.

9. Mr.Surti, learned counsel appearing for the petitioner made attempt to submit that final plot no.157 is in possession of the applicants of both the Civil Application Nos.11743 and 12486 of 2006 and, therefore, at least it is not in possession of the petitioners of Special Civil Application No.6865 of 2006 and it was submitted by Mr.Surti that since as per the T.P.Scheme the rights in the final plot are conferred upon Keshavkant Gramini and the petitioners being the legal heirs, it is required for the Corporation to evict those persons who are occupying the final pot and to entrust and hand over the vacant possession of the plot to the petitioners and it was further submitted that unless and until such course is undertaken simultaneously the Corporation cannot deprive the occupation of the petitioner as the owner or the tenant of the petitioner of the land forming part of original plot no.17/8. In support of the submissions, Mr.Surti relied upon the provisions of Section 46 and 67 of the Gujarat Town Planning and Urban Development Act (hereinafter referred to as the `Act') and he submitted that the possession of any third party other than those who are conferred right under the scheme is illegal and the Corporation which

is implementing the scheme is required to evict such person and to hand over the possession to the allottee of the final plot who are petitioners of Special Civil Application no.6865 of 2006.

10. It appears from the documents which are produced by the applicant of civil application no.11743 of 2006 and applicant of civil application no.12486 of 2006 that the occupants who are in occupation of the land of final plot no.157 are not tress-passers who have entered the possession without there being any authority of the owner of the land. As such, the various documents which are produced with both the civil applications goes to show that deceased Keshavkant Modibhai Gramini entered into the transaction with the person whose names are mentioned in the agreement to sale and the possession receipt is/are also issued. The document confirming the said position with the photograph shows that the petitioners of Special Civil Application No.6865 of 2006 are not the persons who are having no knowledge for execution of such agreement or at least the occupation of such persons under the permission granted by deceased Keshavkant Modibhai. It is a different matter where the inter se disputes between the petitioners of Special Civil Application No.6865 of 2006 and those who are in actual occupation of the land is to be settled on the basis of the agreement to sale either under the provisions of Specific Relief Act or the Transfer of Properties Act but if the entry over the land of the person in occupation is lawful, at least the provisions of the scheme cannot be read for getting the eviction of the person

lawfully occupying the land without there being any proper order of the competent Court for such purpose. In such matters, when the occupation is under the lawful authority and the allottee of the final plot is seeking to get the possession of the final plot, it may be required for the allottee of the final plot to get appropriate declaration of the civil Court for recovery of the possession by establishing the right for exclusive possession of the land. It is an admitted position that there is no order or declaration by the Civil Court authorizing the petitioners of Special Civil Application No.6865 of 2006 to get back the possession of the land of original plot no.17/7.

11. The submission as was raised on behalf of the petitioners that it would be for the persons occupying other than those whose names are mentioned in the scheme for entitlement of the final plot to prefer the civil suit and the Court has to proceed on the basis that the other persons occupying the plot than those who are mentioned in the allotment in the scheme for final plot are to be treated as unauthorized occupant, cannot be accepted in a matter where there is genuine inter se private dispute between the original holder of the land and the persons in lawful occupation. The scope and ambit of such lawful occupation cannot be restricted or narrowed down only to the extent of provisions made in the scheme by the Town Planning Officer as sought to be canvassed on behalf of the petitioners. Even if the provisions of Section 46 of the Act are considered, the power with the Town Planning Officer

are of summary in nature and it does not operate as a bar to a regular suit in a court of competent jurisdiction. The decision of the civil court is to operate over the decision of the Town Planning Officer as provided under Sub-section 3 of Section 46 of the Act. Further, rights in the final plot by the allottee of the final plot would be of the same nature as they were of such allottee in the original plot.

12. Apart from the above, had it been a case where the Town Planning Officer had given hearing to the person in lawful occupation and the rights are extinguished, then it may stand on different footing. If such is a situation, the affected party or the aggrieved party may be required to approach before the civil Court for establishing the right which otherwise not recognized by the Town Planning Officer in the scheme. In the present case, it is not even the case of the petitioner nor it has come on record that the so called rights of the applicants of the civil applications under the agreement to sale and for possession by way of part performance were examined by the Town Planning Officer and were negatived. Therefore, in absence of such situation, the scheme or the provisions made for allotment of the final plot cannot be made an instrument of getting eviction by a person in lawful occupation of the property. The scheme essentially is with the purpose to see that there is proper planning and the scheme cannot be read for settling the inter se dispute for entitlement of the possession by evicting a person in lawful occupation. Therefore, when the

applicants of civil applications are prima facie found to be in lawful occupation, if the petitioner of Special Civil Application No.6865 of 2006 is desirous to evict those persons who are in occupation of final plot no.157, the proper remedy for the petitioner would be to file civil suit and to get appropriate declaration for the exclusive possession of the land in question and if such a declaration is given, possibly the insistence can be made under the provisions of the Act by the petitioners to get the eviction of the applicants of the applications. Until then, the petitioners cannot validly make grievance that the final plot is not allotted as against the original plot or that until the final plot is allotted, the deprivation cannot be made of the another original plot. I am inclined to make such observations in view of the peculiar circumstances that the final plot which is shown in the allotment in the scheme is the same forming part of the portion of the land of original plot and the occupants of the final plot have entered the possession under the lawful authority of the original holder of the plot Shri Keshavkant Gramini.

13. Therefore, in view of the aforesaid observations and discussion, the contention as sought to be canvassed on behalf of the petitioners by Mr.Surti that there cannot be dispossession of the land of original plot no.17/8 until the land of final plot no.157 is handed over to the petitioners, cannot be accepted.

13. At the same time, it deserves to be

clarified that in the event the petitioners approach before the civil Court for getting exclusive possession of the land of final plot no.157 by initiating appropriate proceedings, the civil court shall be at liberty to take independent view of the matter without being in any manner influenced by any of the observations made by this Court qua inter se rights of the petitioners vis-a-vis the applicants of the civil applications, who are occupants of the land of final plot no.157.

14. There is considerable force in the submission made by Mr.Mehta learned counsel for the applicants that Special Civil Application No.6865 of 2006 is sworn by Priyavadan Gramini and his photograph is also pasted in the affidavit. The said affidavit is sworn on 31.1.2006. In spite of the same, there are suppression of material fact not only on the aspects that the land of final plot no.157 is carved out from the land of original plot no.17/7 which was held by Shri Keshavkant Gramini but additional documents are executed together with by the persons who sworn the affidavit on 22.8.2005, copy whereof is produced at Annexure `J', which confirms the position of the transaction entered into by the father of the deponent and not only that but the consideration of Rs.1,50,000/- by pay order of the Surat Peoples' Cooperative Bank Ltd., is also received by the deponent admitting the possession of the said applicants and declaring that the possession of the applicants shall not be interfered with. Such is the position even in respect of the other agreement which has been produced with the civil

application no.12486 of 2006 and the deponent is one of the person who has signed and his photo is also pasted which is apparent from the xerox, copy produced.

15. The factum of entrustment of the possession under the agreement to sale by the father of the deceased Keshavkant Gramini, the actual possession, the receipt of the consideration, the execution of the agreement and the declaration for creating no disturbances to the possession under the agreement to sale all were directly relevant to the issue raised in the petition and the reason being that if one is seeking the relief of directing the corporation to implement the scheme and thereby to entrust the possession, all facts touching to the actual occupation and rights of the occupants and the transaction relating to such land entered into by the persons who approaches before the Court and more particularly with the respondent herein were required to be disclosed. Such material and relevant aspects of the case are not disclosed and from the document it can be said that they are suppressed by the petitioner. Therefore, the petitioners of Special Civil Application No.6865 of 2006 have suppressed the relevant facts jointly and the deponent who has sworn the petition has individually also suppressed the relevant and material fact in the proceedings before this Court. Therefore, while issuing final direction, appropriate orders deserve to be passed.

16. If the claim of the owner for protecting the possession of original plot no.17/8 which in any case

has gone in the scheme and against which final plot no.157 is allotted, is of without any substance in view of the observations and the conclusions recorded hereinabove, the tenant cannot preach the case further in normal circumstances. Had it been a case of inter se dispute between the landlord and tenant or the landlord seeking eviction of the tenant under the guise of the T.P.scheme, it may stand on different footing. In the present case, from the tenor of the petition which was first preferred in 2001 by Mr.Surti and subsequently preferred in 2006 by the landlord by Mr.Surti and the submissions having been made in common go to show that the interest and representation qua the land of original plot no.17/8 including the structure which is in possession of the tenant, are the same and there is no inter se dispute between the landlord and tenant. Further, it appears that the major portion of the land bearing original plot no.17/8 is to be used for 60 mtr. public road and therefore the possession of the said land would, in any case, be required by the Corporation for making the road available to the general public. Mr.Surti learned counsel appearing for the petitioners submitted that the portion of the land which is to be used for road purpose is already surrendered by the petitioners, however, Mr.Desai for the Corporation disputed the said possession. It was further submitted by Mr.Surti that the portion of the land of original plot no.17/8 which is merged with the final plot no.165 is yet to be surrendered and the Corporation is acting at the behest of the allottee of the original plot no.165 represented by Mr.Kapadia and, therefore, he submitted that the

rights of the tenant in any case be protected. Mr.Surti further relied upon the decision of the Apex Court in case of Mansukhlal Jadavji Darji and others V/s Ahmedabad Municipal Corporation and others, reported in (1992)1 SCC 394 for contending that the tenants if are to be evicted, they should be allotted the other alternative space by the Town Planning Authority and he also submitted that such a course was adopted by the Apex Court in the said decision.

17. It appears that in the said decision, the Apex Court while considering the scheme on the touch-stone of the mandatory procedure to be followed by the authority under the Bombay Town Planning Rules, has given directions to provide alternative accommodation based on the earlier decision in case of Jaswantsigh Mathursigh and upheld the scheme. Such is not the issue in the present case nor there is any complaint by the tenant that any special notice was not served or that the mandatory procedure for finalization of the scheme is not followed. Further, it appears that if the interest of the landlord and of the tenant is common and in absence of any inter se dispute between the landlord and tenant, even if any portion of the land which is in possession of the tenant is included in the scheme, the proper remedy for the tenant would be to claim for compensation to that extent and if such compensation is not received by him, he may resort to proper remedy available for recovery of the compensation to the extent of the area in his occupation. At least on ground that the tenant is in occupation, it would not be a case for interference with the scheme which is sanctioned and

made a part of the statute. Suffice it to say that the tenant will be at liberty to resort to appropriate proceedings against the landlord for the inter se rights and also for entitlement of the compensation. But if the area of original plot no.17/8 is included in the final scheme and in exchange of the original plot held by Keshav Gramini of 17/8 and 17/7, the final plot is already allotted and as observed earlier it was even otherwise in the ownership of the original holder and it is only on account of inter se dispute the other persons are lawfully occupying the land, the tenant cannot insist that his landlord must be allotted the land of final plot no.157 simultaneously, when he is to be evicted or deprived of the portion of the land of original plot no.17/8. Therefore, in my view considering the peculiar facts and circumstances of the present case, the decision of the Apex Court in case of Mansukhlal (supra) cannot be made applicable to the present case.

18. In view of the above, the petitions fail. Hence, they are dismissed. Rule discharged. Interim relief vacated. Considering the facts and circumstances and more particularly, in view of the suppression of material facts by the petitioner of Special Civil Application No.6865 of 2006 the same is dismissed with the cost of Rs.5000/- to the State Government and Rs.5000/- to the Municipal Corporation. The aforesaid amount of cost shall be paid within a period of one month from today.

19. In view of the orders passed in the main

Special Civil Application, civil application no.11743 of 2006 and civil application no.12486 of 2006 would not survive and shall stand disposed of accordingly.

20. After pronouncement of the order, Mr.Surti learned counsel states that in the petition of 2001 the interim relief was in operation and, therefore the same be continued for eight weeks so as to enable the petitioners to approach before the higher forum.

21. Considering the facts and circumstances, so far as the portion of the land including the structure, if any of original plot no.17/8 which is to be used for road purposes, I find that it is not a case for even continuing the interim relief since in any case, the land of the road is to be made available to the public at large. So far as the portion of the area which is to be surrendered to the allottee of final plot no.165 is concerned, the status-quo will continue for a period of three weeks from today.

(JAYANT PATEL, J)

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